



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 9

RIN 2900-AN40

Servicemembers' Group Life Insurance and Veterans' Group Life Insurance-Slayer's Rule Exclusion

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) to prohibit payment of insurance proceeds payable because of the death of a person whose life was insured under SGLI or VGLI (decedent) or payment of a SGLI Traumatic Injury Protection (TSGLI) benefit to a person who is convicted of intentionally and wrongfully killing the decedent or determined in a civil proceeding to have intentionally and wrongfully killed the decedent (slayer) and to any family member of the slayer. These provisions apply also to any person who assisted the slayer in causing the death of the decedent. Additionally, this document contains an interim final amendment that defines the term "member of the family" not to include a "domestic partner."

DATES: Effective Date: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

Applicability Date: This rule is applicable to any claim for SGLI or VGLI proceeds, including a claim for a payment under 38 CFR 9.20, Traumatic injury protection, filed on or after [Insert date 30 days after date of publication in the FEDERAL REGISTER], and to any such claim filed before that date that has not been paid or denied as of that date.

Comment Date: Comments on the omission of the term “domestic partner” from the definition of a “member of the family” must be submitted by [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026.

Comments should indicate that they are submitted in response to “RIN 2900-AN40 – Servicemembers' Group Life Insurance and Veterans' Group Life Insurance--Slayer's Rule Exclusion.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney/Advisor,
Department of Veterans Affairs Regional Office and Insurance Center
(310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101,
(215) 842-2000, ext. 2905. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 13, 2011, VA published in the Federal Register (76 FR 77455) a proposed rule to amend VA regulations governing the payment of SGLI or VGLI proceeds and benefit payments under the TSGLI program. Specifically, VA proposed to amend 38 CFR 9.1 and 9.5 to prohibit payment of SGLI or VGLI proceeds or a TSGLI benefit to: (1) a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent (known hereafter as the “slayer”); (2) a member of the slayer’s family who is not related to the decedent by blood, legal adoption, or marriage; and (3) a member of the slayer’s family who is related to the decedent by blood, legal adoption, or marriage and is convicted of a crime involving the intentional killing of the decedent or determined in a civil proceeding to have been involved in the intentional killing of the decedent.

Interested persons were invited to submit written comments on or before February 13, 2012. We received one comment, from Vietnam Veterans of America (VVA) concerning the terms used in, and the complexity of some of the language of, the proposed regulation. Based on internal agency reconsideration

of the proposed regulation and the comment received from VVA, VA is making the following changes to the proposed rule.

First, VVA recommended adding the words “and wrongfully” and “and wrongful” as part of the descriptions provided in proposed § 9.5(e)(2)(i) and (iii), respectively. VA agrees with VVA’s recommendation to include the words “and wrongfully” in § 9.5(e)(2)(i) because those words speak to the heinous aspect of the slayer’s act that violates public policy. In order to be consistent, we will also add “and wrongfully” to § 9.1(l). In addition, this language is consistent with the language used in 38 CFR 3.11, which prohibits the payment of certain VA benefits to “[a]ny person who has intentionally and wrongfully caused the death of another person” if the benefits would be payable by reason of that death. The language of 38 CFR 3.11 serves as an appropriate model for the SGLI and VGLI Slayer’s Rule Exclusion. However, VA did not incorporate the words “and wrongful” into proposed § 9.5(e)(2)(iii) because that provision has been completely revised in accordance with VVA’s second recommendation to prohibit payment of insurance benefits to the family members of either the slayer or anyone who aided or assisted the slayer in causing the death of the decedent.

Second, VVA recommended simplifying the language of proposed § 9.5(e)(2) to make the regulation easier to understand as it relates to the persons who are prohibited from receiving insurance proceeds and benefits. VA agrees with VVA’s suggestion and has modified the language of § 9.5(e)(2) to clarify the intent of the proposed rule that the slayer, anyone who assists the slayer in causing the death of the decedent, and the family members of the slayer or anyone who assists the slayer be prohibited from receiving insurance

proceeds or benefits payable because of the decedent's death. Although proposed § 9.5(e)(2) included anyone who is convicted or found civilly liable for the death of the decedent, which would imply inclusion of an accomplice, the modified rule language removes any ambiguity regarding the inclusion of an accomplice under § 9.5(e)(2).

Third, VVA suggested changing the term "surviving spouse" in proposed § 9.5(e)(4)(i)(B) with the term "widow or widower" to make the reference consistent with the terms used in Chapter 19 of title 38, United States Code (U.S.C.). VA agrees with this suggestion and has altered the regulatory text accordingly. Use of the term "widow or widower" is consistent with the language of 38 U.S.C. 1970(a), which provides the order of preference for payments of SGLI and VGLI proceeds.

Finally, based on internal agency review, VA is removing proposed § 9.1(l)(6), which included "[d]omestic partner" as a "member of the family" for purposes of the provisions in § 9.5(e)(2), due to the unsettled legal landscape surrounding the recognition of such partnerships. Because recognition of the legality of such relationships varies from state to state, VA has determined that including such partnerships in this part would cause an undue administrative burden. The public is invited to comment on the omission of the term "domestic partner" from the definition of a "member of the family."

For the reasons discussed above, VA is adopting the proposed rule as a final rule with the above-noted changes.

Administrative Procedure Act

Regarding the interim final amendment that defines the term “member of the family” within this final rule at 38 CFR 9.1(l) not to include a “domestic partner,” we find, pursuant to 5 U.S.C. 553(b)(B), that there is good cause to dispense with advance public notice. As noted above, the legal landscape surrounding the recognition of such partnerships is unsettled. Therefore, at this time, the term’s inclusion in the definition of a “member of the family” would be impracticable and contrary to the public interest. Accordingly, VA is issuing this final rule with an interim final amendment to omit the term “domestic partner” from § 9.1(l).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and tribal governments or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 - 612. This final rule will directly affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on September 28, 2012, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: September 28, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 1965-1980A, unless otherwise noted.

2. Amend § 9.1 by adding a new paragraph (I) to read as follows:

§ 9.1 Definitions.

* * * * *

(I) The term member of the family as used in § 9.5(e)(2) means an individual with any of the following relationships to a person who is convicted of intentionally and wrongfully killing the decedent or determined in a civil proceeding to have intentionally and wrongfully killed the decedent:

- (1) Spouse;
- (2) Biological, adopted, or step child;
- (3) Biological, adoptive, or step parent;
- (4) Biological, adopted, or step sibling; or
- (5) Biological, adoptive, or step grandparent or grandchild.

* * * * *

3. Amend § 9.5 by adding paragraph (e) to read as follows:

§ 9.5 Payment of proceeds.

* * * * *

(e)(1) The proceeds payable because of the death of an individual insured under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance ("decedent") shall not be payable to any person described in paragraph (e)(2) of this section. A Servicemembers' Group Life Insurance Traumatic Injury Protection benefit payable under § 9.20(j)(3) shall not be payable to any person described in paragraph (e)(2) of this section.

(2) The persons described in this paragraph are:

(i) A person who is convicted of intentionally and wrongfully killing the decedent or determined in a civil proceeding to have intentionally and wrongfully killed the decedent;

(ii) A person who is convicted of assisting or aiding, or determined in a civil proceeding to have assisted or aided, a person described in paragraph (e)(2)(i) of this section; and

(iii) A member of the family of a person described in paragraph (e)(2)(i) or (e)(2)(ii) of this section who is not related to the decedent by blood, legal adoption, or marriage.

(3) The Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraph (e)(1) of this section to any person described in paragraph (e)(2) of this section is not payable to such persons even though the criminal conviction or civil determination is pending appeal.

(4)(i) Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraphs (e)(1) and (e)(2) of this section shall be payable to the first person or persons listed in paragraphs (e)(4)(i)(A) through (F) of this section who are surviving on the date of the decedent's death in the following order of precedence:

(A) To the next eligible beneficiary designated by the decedent in a writing received by the appropriate office of the applicable uniformed service before the decedent's death in the uniformed services in the case of Servicemembers' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit, or in a writing received by the administrative office defined in § 9.1(b) of this part before the decedent's death in the case of Veterans' Group Life Insurance proceeds;

(B) To the decedent's widow or widower;

(C) To the decedent's child or children, in equal shares, and descendants of deceased children by representation;

(D) To the decedent's parents, in equal shares, or to the survivor of them;

(E) To the duly appointed executor or administrator of the decedent's estate;

(F) To other next of kin of the decedent as determined by the insurer (defined in § 9.1(c) of this part) under the laws of the domicile of the decedent at the time of the decedent's death.

(ii) Payment of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic

Injury Protection benefit to any person under paragraph (e)(4)(i) of this section shall bar recovery of those proceeds or that benefit by any other person.

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[FR Doc. 2012-24391 Filed 10/02/2012 at 8:45 am; Publication Date: 10/03/2012]